

PT 99-47

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

PIKE COUNTY BOARD OF REVIEW)		
Objector)	Docket #	95-75-55
v.)		
)		
COMMUNITY LIVING OPTIONS, INC.)	Parcel Index #	54-094-09
Applicant)		
And THE DEPARTMENT OF REVENUE)	Parcel Index #	54-094-11
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Roger Williamson, Hattery, Simpson and West, Attorneys at Law for Community Living Options, Inc. and David O. Edwards, Giffin, Winning, Cohen, and Bedoewes, P.C., Attorneys at Law, for the Pike County Board of Review.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue (hereinafter referred to as the "Department") Springfield, Illinois on November 18, 1998, to determine whether or not Pike County Parcel Index Nos. 54-094-09 and 54-094-11 qualified for exemption during the 1995 assessment year.

Debra A. Arnett, employee of Community Living Options, Inc. (hereinafter referred to as the "Applicant") and administrator of Kepley House, and Ronald J. Wilson, accountant for Resident Facility Management Specialists were present and testified.

The issues in this matter include, first, whether the applicant was the owner of the parcels during the 1995 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether these parcels were used by the applicant for charitable purposes during the

1995 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned these parcels during all of the 1995 assessment year. It is also determined that the applicant is a charitable organization. Finally, it is determined that the applicant used the property for charitable purposes during the 1995 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that Pike County Parcel Index Nos. 54-094-09 and 54-094-11 qualified for a property tax exemption for 91% of the 1995 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 5. (Tr. p. 11)

2. On May 12, 1997, the Department received a property tax exemption application from the Pike County Board of Review for Permanent Parcel Index Nos. 54-094-09 and 54-094-11. The applicant had submitted the request, and the board recommended denial of the requested exemptions for the 1995 assessment year. The Department assigned Docket No. 95-75-55 to the application. (Dept. Grp. Ex. No. 2)

3. On September 18, 1997, the Department approved in part and denied in part the requested exemption application, finding that the properties were entitled to an exemption for 91% of the 1995 assessment year. (Dept. Ex. No. 3)

4. The Pike County Board of Review timely protested the granting of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department's offices, 101 W. Jefferson, Springfield, Illinois, on November 18, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. St. Mary's Square Living Center was incorporated under the General Not-for-Profit Corporation Act on November 19, 1979:

- A. To operate a not-for-profit nursing home for persons with geriatric and developmental disabilities and other like conditions of persons afflicted, infirm or disabled.

- B. To have and exercise all rights and powers conferred on Not-for-Profit corporations under the laws of the State of Illinois, or which may be hereafter conferred, including the power to contract, rent, buy or sell personal or real property, provided however, that this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in the furtherance of the primary purpose of this corporation. . . . (Dept. Grp. Ex. No. 2 pp. 15-19)

7. St. Mary's Square Living Center acquired the subject properties by a warranty deed dated July 26, 1990. (Dept. Grp. Ex. No. 2 pp. 13-14)

8. St. Mary's Square Living Center, Inc. was found to be an exempt organization pursuant to a 501(c)(3) designation letter issued by the Internal Revenue Service on March 4, 1982. (Dept. Grp. Ex. No. 2 p. 12)

9. The Articles of Amendment of the Articles of Incorporation of St. Mary's Square Living Center dated November 2, 1993, changed the name of the organization to the applicant. (Dept. Grp. Ex. No. 2 pp. 9-11)

10. Pike County Parcel Index Nos. 54-094-09 and 54-094-11 have the street address of 408 E. Washington Street, Pittsfield, Illinois. Located on the subject parcels is Kepley House, a 4,200 square foot one-story residential facility for developmentally disabled adults. A 480 square foot one-story garage is also located on the properties. (Dept. Grp. Ex. No. 2 pp. 1-3)

11. The Amended and Restated Not-for-Profit By-laws of the applicant adopted on February 3, 1995 state:

§ 2.03 There will be no required deposit by any resident of the facility as a condition of admission, and no resident shall be denied admission due to inability to pay. (Dept. Grp. Ex. No. 2 p. 32)

12. Kepley House has eight bedrooms with two residents per room. There are common areas as well including a large living room, a dining room, kitchen, and two bathrooms. (Dept. Grp. Ex. No. 2 pp. 68, 70; Tr. p. 25)

13. For a person to be considered for residency in Kepley House, a referral must come from a Pre-admission Screening Agent. The State of Illinois has developed rules and regulations regarding persons to be referred by a Pre-admission Screening Agent and deemed

appropriate for placement in the type of facility that the applicant operates. (Tr. pp. 13-14, 19-20)

14. Once a Pre-admission Screening Agent deems that a person is appropriate for placement in applicant's facility, that person comes and stays overnight at Kepley House. Several assessments are conducted during that overnight stay. (Tr. pp. 13, 18-19)

15. Those assessments include: medical, sociological activity, preference surveys, tests of gross and fine motor skills, reading, and number comprehension tests. (Tr. p. 13)

16. The Facility Qualified Mental Retardation Professional, the clinical person to be in charge of the care of the resident, is also involved in the referral and placement process. (Tr. p. 14)

17. The final decision as to whether a resident is appropriate for placement in Kepley House is made by the administrator of the establishment. (Tr. pp. 12-14)

18. The criteria for admission to Kepley House are set by the State. Included in that criteria is: the resident must be at least 18 years of age, they must be diagnosed as developmentally disabled, and cannot be harmful to themselves or others. (Tr. p. 14)

19. The applicant provides all of the meals in-house for the residents. Two meals, breakfast and dinner, are eaten at the house on a daily basis. The residents go to work activities or workshops during the day and take a lunch with them. The daily activities of the residents are more activity oriented than vocational in this facility. The applicant's aim is to help a resident move toward an independent living situation. However, most of the residents admitted to Kepley House are considered to be there for long term care. (Tr. pp. 25-27, 37)

20. In 1995, the taxable year at issue, Kepley House was full. The residence normally has a waiting list. (Tr. pp. 14, 25)

21. During 1995, none of the residents received a reduction or waiver of fees. (Tr. pp. 14-15)

22. One hundred percent of the income derived for services rendered at Kepley House is paid by the Illinois Department of Public Aid. (Dept. Grp. Ex. No. 2 pp. 6, 22-24; Tr. p.17)

23. The Illinois Department of Public Aid sets the criteria for the amount of rent that is due for each resident. The applicant must accept the amount set by the Department of Public Aid. The applicant operates a number of facilities that are similar to Kepley House. Each facility that the applicant operates has a different rate that is set by the State. The applicant is not permitted to charge any amount in excess of the State rate. In 1995, all of the residents of Kepley House received the maximum public aid rate allowable for that resident and residence. (Tr. pp. 15, 17-18, 25, 28-29)

24. There are three components that determine the rate of a specific facility. The first component is called the “programming component” which is to reimburse the facility for the medical and activity needs of the resident. Things not covered under medical insurance or medical coverage are included in this component. (Tr. p. 30)

25. The second component is called “support” and is intended to cover the cost of providing food service, housekeeping, laundry, general maintenance, and administrative costs of the operation of the facility. The cost of dining out would not be included in the support component. (Tr. p. 30)

26. The last component is “capital” and is the cost of the ownership of the building. It covers depreciation, interest costs, and property taxes if they are deemed to be payable. (Tr. p. 30)

27. From these components, the Department of Public Aid sets a rate for each facility. Each resident has the same rate. The Department of Public Aid looks to the resident to pay what they are able and pays the difference. (Tr. pp. 30-31)

28. According to applicant’s statement of income and expenses for the fiscal year ending September 30, 1995, all income derived for services rendered at Kepley House was paid by the Illinois Department of Public Aid. The year to date total income for the 12 months ending September 30, 1995, was \$455,009.43. Of that amount, interest income was \$130.00 and Medicaid income was \$454,878.47. (Dept. Grp. Ex. No. 2 p. 24)

29. The language contained in applicant's by-laws is not "a direct provision for a waiver of fees," according to the accountant for Resident Facility Management Specialists. Resident Facility Management Services has a contract with the applicant to provide accounting and administrative services. In 1995 there was no waiver by the applicant of the rate set by Public Aid. Kepley House doesn't have the option of reducing or raising the fees from the rates set by Public Aid. (Tr. pp. 28, 32)

30. It is common practice in the long-term care industry to require a deposit to be paid prior to admission to a facility. Applicant's by-laws state that no deposit is required as a condition of admission. Also, if a qualified resident came to Kepley House and had no ability to pay, as long as the applicant had the bed capacity and financial ability, that person would be admitted to the house. Attempts would be made by the staff to have that person become eligible for public aid. When someone is initially admitted to one of applicant's facilities, there is no guarantee that the applicant will be paid. The residents do not come in pre-approved to receive public aid funding. (Tr. pp. 37-38)

31. Public aid only becomes effective for a person on the date that a physician certifies that the resident is in need of a facility like Kepley House. Although not at Kepley House in 1995, the applicant has had situations where the physician has certified a patient on the date seen rather than on the date the resident moved into the facility. Also, family members can fail to provide needed information to the Department of Public Aid in a timely manner and it becomes necessary to re-apply for their services. This scenario also did not occur on the property at issue in 1995. However, if the situations were to occur, the applicant makes no attempt to collect the money from the resident. (Tr. pp. 39-40)

32. When the applicant admits a resident, they expect that it will not be an indefinite amount of time until they are reimbursed by the Department of Public Aid. Typically, public aid is retroactive to the date of admission. (Tr. pp. 39-40)

33. There are two types of income that an individual resident of Kepley House can receive. They can receive either Social Security Disability or SSI. If they receive Social

Security Disability, the State allows the resident to keep \$30.00 per month as a spending allowance. The rest of the Social Security Disability payment is applied to rent. If a resident receives SSI, the monthly check is only for \$30.00 and the resident keeps the entire amount. Public Aid funds pay for the resident's rent payment. (Tr. pp. 15, 22, 24)

34. If a resident receives Social Security Disability, the rent payments are specifically designed for room and board by Social Security. The applicant must complete a payee report once a year for the Social Security Administration in which it is specifically asked how much of a resident's Social Security payment is applied to room and board. (Tr. p. 22)

35. Thirty dollars is not enough money to cover a resident's needs. The applicant supplies all the grooming and hygiene supplies for the residents at Kepley House. They buy soap, deodorant, shampoo, toothpaste, toothbrushes, and clothing if needed. (Tr. p. 16)

36. Because the residents only have \$30.00 per month, the applicant, on a monthly basis, takes the residents out to dine at a restaurant at the applicant's expense. They also take the residents for field trips, ball games, to the Ice Capades, and on vacations, all at the expense of the applicant. (Tr. pp. 20-21)

37. The applicant has also augmented a resident's allowance from a state agency for dental coverage and medicines. (Tr. p. 21)

38. The applicant has never reduced fees to allow a resident to have more than the mandated \$30.00 monthly amount because they must follow the State guidelines. (Tr. pp. 16-17)

39. If the applicant made no effort to collect an SSI payment designated for a resident that was held by another individual, there is the possibility that they are allowing an inurement to the other individual. That would be a violation of the provisions of Section 501(c)(3) of the Internal Revenue Code. (Tr. pp. 35-36)

40. I take administrative notice of the fact that the applicant has been granted a number of property tax exemptions by the Department including a prior exemption for the subject parcel pursuant to Docket No. 91-75-19.

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or

facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code . . . and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services

Both counsel for the applicant and counsel for the objector refer to subsection (c) of 35 ILCS 200/15-65 as the appropriate section of the statute to use to deny or grant the requested exemption. That language requires that an organization be exempt from federal income tax, pursuant to Section 501(c)(3) of the Internal Revenue Code. The applicant is exempt pursuant to that provision. The statutory section also requires that Applicant's bylaws provide for a waiver of fees for services based upon an individual's ability to pay. The applicant submitted bylaws that were effective February 1995 that had a provision that stated that there will be no deposit required as a condition of admission and no resident shall be denied admission due to an inability to pay. The testimony of Ronald Wilson, an accountant with RFMS, the management company handling the finance and accounting duties of Kepley House was that the bylaws contain "no direct provision of waiver of fees".

It should be pointed out that the foregoing underlined statutory language was added to 35 ILCS 205/19.7 (currently found at 35 ILCS 200/15-65) by Public Act 85-312. In the State Senate, Senator Dawn Clark Netsch, on May 19, 1987, explained Senate Bill 203, which became Public Act 85-312, as follows:

Thank you, Mr. President. The amendment addresses a problem that has arisen with respect to the property tax exemption. The Department of Revenue has been suggesting that some traditionally tax exempt nonprofit groups might be partially taxable on part of their property and the one particularly in issue is the YMCA. (Transcript of the 85th Illinois General Assembly Senate Debates 5/19/87-Part 1 p. 13)

Again on May 21, 1987, Senator Netsch expressed the intent of the framers of this amendment as follows:

Thank you, Mr. President. This is the amendment. . . or a revised version of the amendment that we started to discuss last. . . a few days ago and Senator Rigney raised a question which we have now resolved by revising it. It has to do with the property. . . the tax exemption of property,

primarily of the YMCA's and . . . because they have some activities that are in the athletic area, there were some disputes with the Department of Revenue. We have made it clear that . . . that kind of agency's property is tax exempt which I think it was expected all along. (Transcript of the 85th Illinois General Assembly Senate Debates 5/21/87-Part 1 p. 8) (Emphasis supplied)

Therefore I conclude that it was the intent of the General Assembly when it enacted Public Act 85-312, to exempt organizations which provide services and facilities for physical development and physical fitness, like the YMCA. The applicant's residential facility for developmentally disabled adults does not meet the criteria intended by the legislature.

Here, the appropriate exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Methodist Old People's Home"). They have also ascribed to the following definition of "charity[.]" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all "institutions of public charity" share the following "distinctive characteristics[:]"

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all that need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,

- 5) they do not appear to place obstacles of any character in the way of those that need and would avail themselves of the charitable benefits it dispenses;
- 6) and the term “exclusively used” means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old People’s Home at 157.

I take administrative notice of the Department’s determination in this matter that prior to the hearing Community Living Options by clear, conclusive, and convincing evidence proved to the Department that it satisfied the requirements outlined in the above cases to qualify for a charitable property tax exemption for the subject property for 91% of the 1995 assessment year. In addition, pursuant to Docket No. 91-75-19, this applicant was granted a property tax exemption for this parcel.

The burden of proving that an applicant is entitled to a property tax exemption is always upon the applicant. In the instant case, the applicant convinced the Department that it qualified for a property tax exemption for 91% of the assessment year at issue. The Board of Review objected to that determination and requested the hearing. In order for a complaint to pass muster in Illinois, the complaint must state a cause of action in two ways. First, it must be legally sufficient, that is, it must set forth a legally recognized claim as its avenue of recovery. Second, the complaint must be factually sufficient. It must plead facts which bring the claim within the legally recognized cause of action alleged. People ex rel. Fahner v. Carriage Way West, Inc., 88 Ill.2d 300 (1981). In fact, the Court in that case stated:

Illinois is a fact-pleading State. This means that although pleadings are to be liberally construed and formal or technical allegations are not necessary, a complaint must, nevertheless, contain facts to state a cause of action. *Id.* at 308

At the hearing, the Board of Review offered no evidence of the fact that the applicant had not dispensed charity to all that needed and applied for it, or that the benefits were not derived for an indefinite number of persons. Nor did the Board establish that obstacles are placed in the way of those seeking the applicant’s benefits. The applicant’s funds are from Public Aid, a form

of private and public charity. The organization has a 501(c)(3) designation from the Internal Revenue Service, which established that the organization has no capital stock or shareholders, and does not profit from the enterprise.

The objector's Briefs rely on the language found at 35 **ILCS** 200/15-65(c) and the fact that the applicant's bylaws do not provide for a specific waiver of fees. I have found previously that subsection (c) of the charitable exemption provision is inapplicable to this case. I also find that the lack of a specific waiver of fees in the applicant's bylaws is not determinative of this matter.

The applicant testified that the provision in §2.03 of its bylaws is specifically intended to negate the common practice in the long-term care industry to require a deposit to be paid by a resident prior to admission to a facility. The bylaws state that no deposit is required as a condition of admission. Also, if a qualified resident came to Kepley House and had no ability to pay, as long as the applicant had the bed capacity and financial ability, that person would be admitted to the house. Attempts would be made by the staff to have that person become eligible for public aid. When someone is initially admitted to one of applicant's facilities, there is no guarantee that the applicant will be paid. The residents do not come in pre-approved to receive public aid funding.

The objector asserts that because the applicant has fees paid for its services, that it is not entitled to a property tax exemption. Illinois courts have repeatedly stated that the fact that an organization charges fees to persons that can afford to pay does not mean that a facility is not actually and exclusively used for charitable purposes. Small v. Pangle, 60 Ill.2d 510 (1975); Vermilion County Museum Society v. Department of Revenue, 273 Ill.App.3d 675 (4th Dist. 1995); Resurrection Lutheran Church v. Department of Revenue, 212 Ill.App.3d 964 (1st Dist. 1991)

I find that the applicant has established that it meets the six criteria set forth in Methodist Old People's Home. I also find that objector has not met its burden of going forward with

evidence to negate the finding of the Department that the applicant is a charitable organization and that its use of the parcel in question qualifies for a charitable exemption.

It is therefore recommended that Pike County Parcel Index Nos. 54-094-09 and 54-094-11 be exempt from property tax for 91% of the 1995 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
August 31, 1999